IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

S.T.C. No.7 of 2006
Date of decision: 20.11.2006

Sham Lal & Brothers.

-----Petitioner.

Vs.

The State of Punjab and others.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

ORDER:

This petition has been filed under Section 22(2) of the Punjab General Sales Tax Act, 1948 for directing the Sales Tax Tribunal, Punjab (for short, "the Tribunal") to refer following questions of law for adjudication by this Court:-

(i) Whether the petitioner has been afforded the proper opportunity of hearing and for producing necessary evidence?

(ii) Whether the order passed by the Ld. Sales Tax Tribunal conforms to the principles of speaking order laid down in Brij Bassi High Tech Udhyog Ltd. case or not?

(iii) Whether in the facts and circumstances of the case, the dealer is entitled for exemption on the basis of exports made by him during the year 2000-01?"

The dealer was availing exemption from sales tax under the provisions of Punjab General Sales Tax (Deferment and Exemption) Rules, 1996. The dealer was required to export 25% of its products in markets outside India. The dealer relied upon H-form with regard to export agreement of a Delhi dealer to whom the goods were claimed to have been supplied by the petitioner for export, which was initially accepted at assessment stage.

The revisional authority, after hearing the assessee-petitioner, held that the H-form furnished by the petitioner, was not genuine as the same was not issued by the appropriate Sales Tax Authority to the person who had given the same to the petitioner and bill of lading relied upon also could not be accepted to be adequate proof of despatch of goods for export in absence of attestation/signatures of the customs authorities and also in absence of proving nexus with the goods exported.

The petitioner preferred a revision petition before the Tribunal.

The Tribunal agreed with the view taken by the revisional authority and dismissed the revision petition. The petitioner applied for rectification of mistake, which was also dismissed by the Tribunal. A writ petition filed before this Court was dismissed to enable the petitioner to avail of alternative remedies under the Act.

We have heard learned counsel for the petitioner and perused the findings recorded.

As regards question Nos.(i) and (ii), we find from the order of the revisional authority (Annexure P-10) and from the order of the Tribunal (Annexure P-12), that the issues have been duly gone into and reasons have been given rejecting the claim that the assessee had exported the goods.

In the order of the Tribunal (Annexure P-14), dismissing the application for rectification, it has been observed that counsel for the assessee admitted that the facts involved in the case had been duly commented and adjudicated upon in the order of the Tribunal (Annexure P-12). Accordingly, these questions do not require any further adjudication by this Court.

As far as question (iii) is concerned, learned counsel for the petitioner does not press his submission that the assessee was required to prove the genuineness of H-form or that the production of H-form was mandatory for proving obligation to export.

In view of above submissions, question No.(iii) does not arise for consideration.

In view of above, we are of the view that no question of law arises for adjudication and no direction is thus called for, to the Tribunal, to refer any question of law claimed by the assessee for adjudication to this Court.

The petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

November 20, 2006
ashwani

(RAJESH BINDAL)
JUDGE